IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR.

JUDGMENT.

Legal Representative of Mool Chand vs. Sameer Singh

S.B. Civil Second Appeal No. 67/1991 against the judgment and decree dated 18.4.1991 passed by the learned Addl. District & Sessions Judge, Bhilwara in Civil Appeal No.23/84.

Date of Judgment: April 11, 2007.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. Manish Shishodia for the appellant.
Mr. Arvind Samdaria for the respondent.

BY THE COURT:

This second appeal is against the judgment and decree of the trial court dated 31.3.1983 and the appellate decree dated 18.4.1991.

The plaintiff Sameer Singh filed the suit for eviction of defendant tenant Mool Chand in the trial court on 4.5.1969. The plaintiff's case was that he was doing the business in a shop which was mortgaged with him. The mortgagor of that shop has filed the suit for redemption of the said mortgaged property and he is apprehending decree against him. Therefore, the plaintiff is in need of his own shop which is in possession of defendant-tenant. The plaintiff also submitted that the defendant is doing the business of commission agent and now the Krishi Mandi has

been established wherein the defendant has been allotted shop no.71. In view of the above, in case decree of eviction is passed against the defendant-appellant, he is not likely to suffer any hardship.

The defendant submitted written statement and stated that he is doing the business from the shop in dispute and is not doing the business from any shop situated in the Mandi area. In the written statement, a strange plea has been taken by the defendant and that is that the officers of the Krishi Mandi forcibly recovered the amount from the defendant, obviously for the shop, which according to the plaintiff, was allotted to the defendant. The defendant also stated that in this very year, the plaintiff constructed 3-4 shops near the shop in dispute and those shops were let out by the plaintiff to different persons. It is also pleaded that the defendant's business is well established in the shop in dispute and in case any decree for eviction is passed against him then he will suffer greater hardship. Issues were framed. Both the parties produced the evidence and ultimately, the trial court decreed the suit of the plaintiff on the ground of personal bona fide necessity of the plaintiff by the judgment and decree dated 31.3.1983. The defendant-tenant preferred regular first appeal which was dismissed by the first appellate court. Before the first appellate court, the defendant submitted an application under Order 6 Rule 17,C.P.C. and stated that about one year's ago (which comes to the year 1983), the plaintiff got

the possession of one shop which was let out to one Banshi Lal and, therefore, the plaintiff sought permission of the appellate court to amend the written statement so as to submit that even if there was any need of the plaintiff for any shop then that has been satisfied by the another shop. The plaintiff filed reply to the said application before the first appellate court and pointed out that he filed the suit for eviction of the present tenant in the year 1969. By the time the plaintiff could get possession of the shop which was in possession of Banshilal, 15 years have already passed to the present litigation. By this time, the plaintiff's other family members became major and in the year 1984, the respondent had six major sons. It is stated that the availability of one more shop when there are so many adult family members of the plaintiff, cannot satisfy the need of the plaintiff. The appellate court after considering all the facts as stated above, dismissed the appeal. Hence this second appeal.

Following substantial questions of law were framed by this Court on 29.4.1991 while admitting the appeal:-

> "*(1) Whether the learned lower courts have seriously erred in not taking into consideration that the plaintiff-respondent has obtained possession of the adjacent shop in execution of the decree obtained against its tenants Banshilal and others, sons of Ram Kumar ?*
>
> *(2) Whether the learned lower courts have seriously erred in dismissing the suit and passing the decree of*

ejectment despite the fact that during the pendency of the suit the plaintiff-respondent constructed four shops near the suit shop?"

The learned counsel for the appellant submitted that the fact is not in dispute that the respondent constructed about 4 shops, adjoining the shop in dispute and further the plaintiff got the possession of one shop which is adjacent to the shop in dispute. That possession was delivered to the plaintiff in execution of the decree in a suit filed against the aforementioned tenant Banshilal. The learned counsel for the appellant submitted that the first appellate court committed error of law in dismissing the appellant-defendant's application filed under Order 6 Rule 17,C.P.C. and by that denied the opportunity to the defendant to prove the fact that the need of the plaintiff stands satisfied because of getting of possession of one shop which was in possession of the plaintiff's tenant Banshilal. It is also submitted that the plaintiff's contention that the four shops which he constructed were small, should not have been accepted by the courts below because of the reason that admittedly the new constructed property were shops and not any room etc. where there cannot be business.

The learned counsel for the respondent submitted that in fact the two courts below considered the evidence in detail. The appellant wants reconsideration of the evidence so that this Court may take a different view than the view taken by the two courts below on the question of

fact. It is also submitted that it is not a case of non-consideration or evidence or misreading of evidence by the courts below. It is also submitted that assuming for the sake of argument that there is possibility of different view then the view taken by the two courts below even then that cannot be a ground for interference by the High Court in the judgment and decree passed by the two courts below while exercising jurisdiction under Section 100,C.P.C.

I considered the submissions of the learned counsel for the parties and perused the record also.

It is not in dispute that the suit was filed by the plaintiff for eviction of the tenant in the year 1969. It is also not in dispute that the plaintiff has six sons and during pendency of the suit, consuming 15 years, the plaintiff got possession of one shop which was in possession of Banshilal. Since the fact of getting the possession of the shop from Banshilal was an admitted fact, therefore, there was no need to hold an enquiry so far as this fact is concerned. The fact of passing of 15 years to the litigation that is plaintiff's suit for eviction against the tenant is also not in dispute, rather say, it is a fact from record. The plaintiff's explanation cannot be rejected nor could have been rejected by the courts below that during pendency of this litigation, his minor son became major and at that time, when the application was moved in the year 1983 by the defendant seeking amendment of the written

statement, the plaintiff had total seven adult persons and, therefore, the plaintiff's contention was full answer to the contention raised by the defendant about the satisfaction of the need of the plaintiff because of getting the possession of the shop from Banshilal by the landlord. At present 23 years more have passed and the defendant-appellant is seeking dismissal of the suit after reversal of the eviction decree on the ground of subsequent event but ignored the fact that if subsequent event projected by the appellant-defendant-tenant can be taken note off, the court can take judicial notice of this fact that the plaintiff's family must have expanded during period of now 38 years.

In view of the above reasons, getting possession of the shop of Banshilal by the landlord in the facts of this case has not satisfied the need of the plaintiff nor could have satisfied the need of the plaintiff for running the business.

So far as construction of four more shops are concerned, for that when the offer was given to the defendant himself to take any of the shops, the defendant himself refused and that supports the view taken by the two courts below that the shops which plaintiff stated are very small shops, was rightly accepted by the two courts below. Merely availability of the accommodation with the plaintiff is of no consequence unless that available property could satisfy the need of the plaintiff. Be it as it may be, the fact of construction of four shops was

considered by the courts below and, therefore, it is also not a case of non-consideration of any evidence. The learned counsel for the respondent rightly pointed out that even if any other view is possible which in the facts of this case is nos possible, even then it will not be just and proper to interfere in the eviction decree passed by the two courts below against the appellant-tenant.

The learned counsel for the appellant prayed that now the grand-son of the original tenant is doing the business in the suit property and in view of the fact that almost 48 years are about to pass from the tenancy of the grand-father of the defendant-appellant, therefore, some time may be granted to the appellant.

I considered this prayer of learned counsel for the appellant and looking to the facts of the case, this Court is of the view that the appellant be granted time up to 30.4.2008 to vacate the suit premises.

Therefore, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of three months from today that he shall hand over the vacant possession to the landlord by or before 30.4.2008 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decretal amount, if due, and shall also pay the rent up to 30.4.2008(in advance) within a period of three months from today before the trial court or directly to the landlord, the decree under

challenge shall not be executed till 30.4.2008.

In case of non-compliance of the order or default in payment of amount mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(**PRAKASH TATIA),J.**

mlt.